*** THE HONOURABLE SRI JUSTICE J.CHELAMESWAR**

AND

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

+ WRIT PETITION NO. 8072 OF 2004

%THURSDAY, THE THIRD DAY OF FEBRUARY,

TWO THOUSAND FIVE

G.Srinivas Rao s/o G.Venkata Swamy,

Aged about 31 years, now working as Assistant

Superintendent of Police, West Tripura District,

Tripura.

Petitioner

Versus

$ The Union of India rep. by its Secretary

to Government, Ministry of Home Affairs,

New Delhi and others.

Respondents

! Counsel for the petitioner : Sri Nooty Rama Mohana Rao

^ Counsel for the respondent No.1: Sri V.T.Gopalan, Additional Solicitor General of India, instructed by Mr. B.Narasimha Sharma, Additional Central Government

Standing Counsel.

Counsel for the respondent No.2: Government Pleader for Services-II

Counsel for the respondent No.3: None appeared

Counsel for the respondent No.4: Mr. Madhav Pannikar, Advocate, for Mr. Bhaskar Poluri, Advocate

< Gist :

>Head Note:

? 1) (1994) 6 SCC 38

2. (1992) 3 SCC 217

3. (1996) 10 SCC 562

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 8072 of 2004

Between:

G.Srinivas Rao s/o G.Venkata Swamy,

Aged about 31 years, now working as Assistant

Superintendent of Police, West Tripura District,

Tripura.

..... PETITIONER

AND

1. The Union of India rep. by its Secretary to

Government, Ministry of Home Affairs, New Delhi.

2. The State of Andhra Pradesh rep. by its Secretary to

Government, General Administration Department,

Secretariat, Saifabad, Hyderabad.

3. The State of Tripura rep. by its Chief Secretary to

Government, Agartala.

4. Sri M.Stephen Raveendra, IPS, s/o M.B.Ranjeeth

(Retd. ASP), Film Nagar, C/o Director General &

Inspector General of Police, Government of Andhra Pradesh

Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari: (a) Call for the records relating to and connected with the order dated 09.01.2004 in O.A. No. 155 of 2001 on the file of the Central Administrative Tribunal and quash and set aside the same; (b) Consequently quash and set aside the order of allotment of the Writ Petitioner to the Manipur-Tripura Cadre passed by the Government of India, Ministry of Home Affairs, dated 21.09.1999; and (c) Direct the respondents to allocate the petitioner forthwith to the cadre of the state of Andhra Pradesh, if necessary by replacing the 4th respondent.

For the Petitioner: Mr. Nooty Rama Mohana Rao, Advocate

For the Respondent No.1: Mr. V.T.Gopalan, Additional Solicitor General for India, instructed by Mr. B.Narasimha Sharma, Additional Central Government Standing Counsel

For the Respondent No.2: Government Pleader for Services-I,

For the Respondent No.3: None appeared

For the Respondent No.4: Mr. Madhav Pannikar, Advocate, for Mr. Bhaskar Poluri, Advocate.

The Court Made the Following :

:: ORDER ::

(Per Hon'ble Sri Justice G. Raghuram)

Heard Sri Nooty Rama Mohana Rao, learned counsel for the petitioner, Sri V.T.Gopalan, Additional Solicitor General for India instructed by Sri B.Narasimha Sharma, learned Additional Central Government Standing Counsel for the 1st respondent, the learned Government Pleader for Services-I for the 2nd respondent and Sri Madhav Pannikar, Advocate for Sri Bhaskar Poluri for the 4th respondent.

The substantive grievance of the petitioner is as regards his allocation to the Manipur-Tripura Joint Cadre of the Indian Police Service. Urging the said grievance, in particular on the ground that his allocation to the Manipur-Tripura Joint Cadre while allocating the 4th respondent to the AP Cadre is illegal, the petitioner filed OA No. 155 of 2001 before the Hyderabad Bench of the Central Administrative Tribunal (CAT). By the order dated 9.1.2004 the OA was dismissed. The said order is assailed in this writ petition.

Chronology of facts, in brief :-

A. The petitioner and the 4th respondent appeared for the Civil Services

Examination 1998 (CSE 1998) conducted by the UPSC. The 4th respondent belongs to Other Backward Classes (OBC) category. While the petitioner secured rank No.95, the 4th respondent secured rank No.133 in the over all merit list.

B. While undergoing training at Mussoorie, the 1st respondent addressed a communication dated 21.10.1999 to the petitioner offering him an appointment to the IPS on the basis of his qualifying in the CSE 1998 and intimating his allotment to the Manipur-Tripura Joint Cadre. The petitioner was asked to convey his acceptance of the offer for appointment within the specified time. The 1st respondent by the notification dated 26.10.1999 allocated various State cadres to the 36 candidates selected to the IPS on the basis of the CSE 1998. While the petitioner was allocated to the Manipur-Tripura Joint Cadre, the 4th respondent was allocated to the AP Cadre.

C. On 1.11.1999 the petitioner conveyed his acceptance of the offer, to the 1st respondent, in response to the 1st respondent's letter dated 21.10.1999.

D. On 20.10.2000 the petitioner addressed the 1st respondent requesting cadre transfer/cadre reallotment to the AP Cadre. In this letter he stated that two unavoidable and unexpected vacancies had arisen in the AP Cadre even before his allotment, this fact was communicated to the 1st respondent by the AP Government and that the AP Chief Minister had also represented the mater to the concerned Union Minister requesting review and reallotment of the petitioner to the AP Cadre, vide a letter dated 30.12.99. The petitioner also referred to his personal circumstances such as his dependent brother's illness which requires his presence in AP and requested transfer or reallotment to the AP Cadre under the available powers under the IPS (Cadre) Rules 1954 (for short 'the Cadre Rules).

E. On 31.10.2000 all the IPS probationers of the 52nd RR (1999) batch including the petitioner and the 4th respondent were intimated

movement orders on completion of their 42 weeks basic training informing that they will stand relieved from the National Police Academy, Hyderabad, on 31.10.2000 and they should undergo further attachments as specified in the said order.

F. The petitioner filed OA No. 155 of 2001 before the CAT for a direction to the 1st respondent to allocate him to the AP Cadre. By the judgment dated 25.7.2001 the CAT dismissed the OA.

G. The petitioner filed WP No. 17902 of 2001 before this court against the order of the CAT dated 25.7.2001. A Division Bench of this court by the judgment dated 22.4.2003 allowed the writ petition, set aside the order of the CAT and remanded the issue to it to consider whether in the context of data being available as to the allotment of the several categories of persons to various States cadres, general vacancies could be decreased mechanically in a State merely because alphabetically a particular State was the first State. This court also observed that all other questions raised in the writ petition are kept open for consideration by the CAT.

H. The CAT again considered OA No.155 of 2001 and by the judgment impugned in this writ petition, rejected the petitioner's application.

The case of the petitioner is that the single vacancy in the IPS.RR arising in Andhra Pradesh is an "insider general vacancy" and had been irrationally converted by the 1st respondent to an "insider OBC" vacancy by allocating the 4th respondent thereto. According to the petitioner since he is a general candidate and obtained the higher rank of 95 as against rank 133 of the 4th respondent in the over all merit list of CSE 1998 and as the sole vacancy in the AP Cadre for the said recruitment year was allocable to a general insider candidate i.e., an open vacancy allocable to a candidate hailing from the State of Andhra Pradesh, on all relevant and applicable parameters, the petitioner ought to have been allocated to the AP Cadre and not the 4th respondent.

The stand of the 1st respondent :-

A. In the CSE 1998 there were a total number of 36 vacancies in the various

IPS cadre (from various States). In accordance with the applicable percentage of reservations (on which aspect there is no contest between the parties herein), 10 vacancies were reserved for the OBC category candidates and 5 for SC/ST category, as per the 200 points model post based roster introduced in the IAS/IPS from the CSE 1998, in view of the directions of the Supreme Court in another case.

B. The cadrewise vacancies to be filled up in each IPS cadre from the CSE 1998 were distributed as per the prescribed percentage for each category as under:

SL	Cadre	Total Vacancies	OBC rounded 27% off OBC	SC/ST rounded 22.5 off SC/ST	General
1	Andhra Pradesh	1	.27 0	.225 0	1
2	Assam Meghalaya	1	.27 0	.225 0	1
3	Bihar	1	.27 0	.225 0	1
4	Gujarat	3	.81 1	.675 1	1
5	Haryana	1	.27 0	.225 0	1
6	Himachal Pradesh	1	.27 0	.225 0	1
7	J & K	3	.81 1	.675 1	1
8	Karnataka	3	.81 1	.675 1	1
9	Kerala	2	.54 1	.450 0	1
10	Madhya Pradesh	1	.27 0	.225 0	1
11	Maharashtra	1	.27 0	.225 0	1
12	Manipur Tripura	4	1.08 0	.900 1	2
13	nagaland	2	.54 1	.450 0	1
14	Orissa	2	.54 1	.450 0	1
15	Punjab	1	.27 0	.225 0	1
16	Rajasthan	4	1.08 1	.900 1	2
17	Sikkim	1	.27 0	.225 0	1
18	Tamil Nadu	1	.27 0	.225 0	1
19	AGMU	1	.27 0	.225 0	1
20	Uttar Pradesh	1	.27 0	.225 0	1
21	West Bengal	1	.27 0	.225 0	1
	Total	**36**	**8**	**5**	**23**

C. On the distribution of the vacancies as above, the number of vacancies to be filled up by the general candidates came to 23 as against the available 21, while the number of OBC vacancies came to 8 as against 10 vacancies allocable to this category as per the applicable

percentage of reservations. Therefore it became necessary that two vacancies slotted as "general" (as per the above table) be diverted to OBC. The advice of the Ministry of Personnel, Public Grievances and Pensions in the Department of Personnel and Training was solicited. The 1st respondent was advised by the aforesaid Ministry that since the figures relating to the last 5 years (in the IPS), are not available (in respect of OBC candidates) they were increasing/decreasing the vacancies in respect of OBC category, in such exigencies, at the time of approximation for a particular year in a category and that adjustment is being done by allocating OBC vacancy in State cadres alphabetically. Consequent on such advice, the 1st respondent converted one general vacancy each in the AP and Assam-Meghalaya cadres as OBC vacancy, to make up the shortfall in this category as had resulted in the adding of fractions.

D. For the CSE 1998 category-wise vacancies, to be filled up in the various IPS State cadres, were determined on 28.5.1999, allocation of cadres was approved on 15.10.1999 and notified on 27.10.1999. Neither on 28.5.1999 when the category-wise vacancies to be filled up in various IPS cadres from the 1998 CSE were determined nor on 15.10.1999 when the allocation of cadres was finalised were the figures for all the previous 5 years available with the 1st respondent.

E. The principles of cadre allocation are set out in a DO letter dated 30/31-5-1985 which provides for distribution of category-wise vacancies in each cadre as per their prescribed percentage. These principles which are in the nature of executive instructions are normally adhered to strictly by the 1st respondent. However, at times, due to administrative exigencies, such as the necessity of rounding off of fraction/approximation to the nearest point or where a mismatch occurs between the 30 point vacancy roster and the 30 point reservation roster, a deviation from the above executive instructions becomes inevitable.

F. The contention that as a result of the allocation of the 4th respondent to the AP State cadre, the OBC reservation in the State in the IPS would increase to more than 30% as against the 27% permissible, is

misconceived. The IPS being an All India Service, the reservation policy is applied at the All India Level and not at the State cadre level.

G. Approximation of vacancies on the basis of added/neglected fractions in various States on alphabetical basis is resorted to only in exigencies where the added/neglected fractions in two or more States cadres is the same. Normally approximation of vacancies is done by diverting the general vacancy from the State cadre where the added or neglected fraction is the highest. In respect of CSE 1998, the added/neglected fraction in as many as 13 State cadres, including Andhra Pradesh and Assam- Meghalaya was the same i.e., 0.27%. Therefore, as per the advice of DOP&T, the general vacancies of Andhra Pradesh and Assam-Meghalaya were converted to OBC vacancies, as alphabetically these two State cadres were high up in order.

Contentions of the 4th respondent :-

A. The writ petition requires to be dismissed for non-joinder of necessary parties. The reliefs sought by the petitioner in OA No.155/01 as well as the substantive relief sought in this writ petition, if granted, would require a review of the entire process of cadre allocation pursuant to introduction of OBC reservations, right from the inception of such reservations commencing from the 1995 Batch of IPS. Consequently, cadre allocations of over 500 officers of IPS, would potentially face disruption. The vacancy in Manipur-Tripura cadre pursuant to the 1998 CSE i.e., 1999 IPS.RR Batch, is allocable to a "general outsider" candidate. The answering respondent belongs to the OBC category and was recruited as such. He must therefore be posted in an OBC vacancy, perhaps in a different State. The candidate allotted to such State will again have to be accommodated elsewhere and so on. This would result in a chain reaction and result in chaos. In the circumstances all the officers likely to be effected by the relief sought by the petitioner, at least all the officers belonging to the 1999 IPS.RR Batch should be impleaded. As this was not done, the writ petition requires to be dismissed.

B. As the policy and instructions of the Department of Personnel and Training,

Government of India (DOPT) are being questioned, the DOPT ought to have been impleaded as a party, as it was the appropriate department competent to explain the rationale underlying its policy and instructions.

C. The allocation of cadre to the members of the IPS is under the Cadre Rules. As per Rule 5(1) of the Cadre Rules the allocation of cadre officers to various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned. None of the statutory provisions governing recruitment to the IPS, *per se* provide for any reservation in the matter of allocation of cadres to the members of the IPS. The reservation policy is followed at the recruitment level. In allocation of cadres it is adequate if the broad percentage of reservations is considered at each State level. The mathematical certainty of the percentage of reservations for each of the reserved groups at the level of each State or Joint cadre is neither always possible nor legally required. In the circumstances, the petitioner's contention that the allocation of the answering respondent to the AP State cadre resulted in exceeding the OBC reservations in the State of AP, is legally misconceived. The petitioner's claim involves an exercise which is neither pragmatic nor always possible, in view of the complexity involved in implementing the plural administrative policy choices of the Union Government, viz., accommodating the various reservations State and Joint Cadre-wise, allocating persons hailing from a particular State to other States in the interests of national integration and administrative efficiency and such other choices. For this reason the power and discretion of making the allocation of cadres vests in the Government of India. In view of the decision of the Supreme Court in ***Union of India and Others vs Rajiv Yadav IAS and Others()*** a candidate selected to the IPS has a right to be considered for appointment to the IPS but no right to allocation of a cadre of his choice or to his home State. As a member of an All India Service he is liable to serve in any part of India.

D. The "outsider insider outsider" formula evolved as a policy in the matter of allocation of cadres is but an administrative instruction and constitutes

a guideline. It is not a part of the statutory framework requiring strict and inflexible compliance. Such guidelines do not constitute a legally enforceable right.

E. The practice of approximation of category-wise vacancies in various cadres to be filled through allocation of cadres to candidates selected for appointment to All India Services, on their qualifying in the CSE, on the basis of relevant data of the previous 5 years, is being followed by the Union of India in respect of SC/ST category since the 1985 CSE. Therefore for the purpose of uniformity and non-discrimination, in respect of OBC category also the Union of India is following the same practice.

F. The 27% reservation for OBC candidates commenced from the CSE 1994 i.e., 1995 IPS.RR Batch. As relevant data of the previous 5 years i.e., from 1995-99 (inclusive) was not available with the 1st respondent at the time of cadre allocation, the allocation was made by following the most appropriate and rational principle in the circumstances viz., readjustment of vacancies by alphabetical identification of cadres. Demonstrably the relevant data for preceding the 5 years, including of the 1999 Batch, was not available to the 1st respondent nor was such data withheld by the 1st respondent from the DOPT. As the recruitment to the 1999 Batch of IPS.RR was itself the 5th recruitment year (recruitment with OBC reservations commenced from the 1995 IPS.RR Batch), 5 years data could not have been available at the time of cadre allocation of the 1999 Batch IPS.RR candidates.

G. The policy of approximation by following the alphabetical order of the States in the Union, would not always result in the approximation being limited only to States higher up in the alphabetical order. This has happened for the 1999 IPS Batch since the total number of vacancies available for regular recruitment was meagre(36). Earlier batches, as is apparent from the list furnished by the petitioner himself, were much larger – 98 vacancies in the 1995 batch; 99 in the 1996 batch; 96 in the 1997 batch and 84 in the 1998 batch, as against only 36 in the 1999 batch. Wherever vacancies available for recruitment to an All India

Services is large in a given year the need for approximation is also proportionally greater and in such event States even lower down in the alphabetical order would be considered for administering the approximation principle. In the circumstances the petitioner's contention to the contrary is patently misconceived.

H. The petitioner having received the offer of appointment to the IPS vide the letter of the 1st respondent dated 21.10.1999, and having conveyed his acceptance of the offer vide his letter dated 1.11.1999, fully conscious that his allocation was to the Manipur-Tripura Joint Cadre, is estopped from challenging the cadre allocation. Even the petitioner's representation dated 20.10.2000 is for cadre transfer/cadre reallotment and the said representation does not assert his claim on the basis of excess OBC representation in the Andhra Pradesh Cadre. His claim is only on the basis of personal circumstances.

I. Since OBC reservations are effectuated from 1995 batch and it is in the 1999 batch that the petitioner and the answering respondent were recruited, it is too short a time frame to assess the percentage of reserved candidates in each State and Joint cadres and to permit a rational conclusion as to the inappropriateness of following the alphabetical principle in making the approximations.

J. In the totality of circumstances including the chaotic effect it would have on the cadre allocations of a large number of IPS officers in the entire Republic; the fact that a mere 4 to 5 years (since the 1995 batch) is too short a period for judging the rationality of the approximation principle based on the alphabetical method and in the absence of any *mala fides* on the part of the 1st respondent in making cadre allocations, either pleaded or established, no case is made out for grant of relief in the writ petition.

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Analysis of the case :

From the CSE 1978 the allocation of direct recruits to the All India Services was being made following the "limited Zonal preference system". For this purpose all the cadres/joint cadres in the country were divided into zones, candidates were given an opportunity to indicate their preference zone-wise and for two cadres in each zone and the allocations were being made duly considering the ranks and preferences of the candidates subject to allocation of vacancies in each cadre between insiders (hailing from the particular State) and outsiders (not hailing from the particular State). Such limited Zonal preference system was resulting in a very minimal movement of candidates from one part of the country to another across several States. Even such limited inter regional movement of candidates was taking place only in respect of candidates obtaining much lower ranks in the over all merit list. This system also resulted in "outsiders" getting allocated mostly to neighbouring States. To remedy the above perceived deficiencies, from the CSE 1984 (1985 Batch), the Ministry of Personnel and Training in the Government of India decided to revert to the roster system which was followed for allocation during 1966-77 CSEs but with certain modifications. The refined scheme in this regard was reiterated in the letter dated 30/31-5-1985 addressed by the Ministry of Personnel and Training to the Secretary, Department of Forest and Wild Life, Government of India. The broad principles of the revised system of allocation read as under:

1. *The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during allocation, the break-up of vacancies in a cadre between 'outsiders and 'insiders' will be calculated following the cycle of 'outsider', 'insider', 'outsider'.*

2. *The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this reservation, scheduled castes and scheduled tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders' will be done in the ration of 2:1. This ratio will be operationalised by following a cycle 'outsider', insider', 'outsider' as is done in the case of general candidates.*

3. *Allocation of 'insiders', both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.*

4. *Allocation of 'outsiders', whether they are general candidates or reserved candidates, whether they are men or women,*

will be according to the roster system after placing 'insiders' at their proper places on the chart as explained below:

i. *All the State cadres/joint cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the groups could be as follows :*

Group I Andhra Pradesh, Assam, Meghalaya, Bihar and Gujarat.

Group II Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh.

Group III Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.

Group IV Tami Nadu, Union Territory, Uttar Pradesh and West Bengal.

ii. *Since the number of cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.*

iii. *The 'insider' quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 'insider' candidates, they should go to the share of the State in their respective cycles and if there are 2, 'insider' candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.*

iv. *The 'outsider' candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below.*

v. *In the first cycle, State cadre/joint cadres which have not received 'insider' candidates should be given one candidate each in order of merit of 'outsider' candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group II States, the third cycle with Group III States and the fourth cycle*

with Group IV States and the fifth cycle again with Group I States. Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

vi. *For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on.*

vii. *In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general 'insiders' quota it could, however, be made up by 'insider' reserved candidates. "*

Pursuant to a policy decision of the Government of India in 1990-91 and after the judgment of the Supreme Court in ***Indira Sawhney and Others vs Union of India and others ()***, the Ministry of Personnel, Public Grievances and Pensions by an O.M. dated 8.9.1993 modified the earlier memo dated 13.8.1990 enabling reservation of 27% of the vacancies in civil posts and services under the Government of India, including in All India Services, to be filled through direct recruitment.

Thus, from the CSE 1994, 27% of direct recruitment vacancies were to be reserved in favour of OBCs. The roster points had to be accordingly redefined to accommodate these reservations. The principles governing allocation to All India

Services as spelt out in the letter dated 30/31-5-1985 had also to now accommodate these additional reservations. Accommodation of the various reservations in the All India Services while allocating candidates to State and Joint cadres while adhering to the national policy of ensuring movement of candidates hailing from one State to other States, was often a complex exercise. The complexity is confounded in particular years when the number of vacancies for a particular year in various State cadres is very limited and the percentage of the various categories of reservation have to be worked out as fractions of such limited vacancies in the several State cadres. This difficulty is illustrated by what happened in the CSE 1998. As apparent from the table (extracted above), of the 21 State and joint cadres, in CSE 1998 in 13 cadres only one vacancy each, was available; two vacancies each were available in three cadres; 3 vacancies each in three cadres; while 4 vacancies each were available in two cadres.

Thus it is, that in the rounding off of fractions, while adjusting OBCs in such limited vacancy situation, 8 OBC vacancies were initially allocated to various cadres as against 10 vacancies that should have gone to OBCs; while the number of vacancies to be filled up by general candidates came to 23 as against only 21 available to general vacancies. The need therefore of reallocating two of the general vacancies to OBCs arose.

In the above scenario the 1st respondent after consulting the DOP&T decided to reduce two general vacancies of two States by substituting by OBCs vacancies. For this purpose it followed the alphabetical method in identifying the State/Joint Cadres for the purpose of such substitution. As Andhra Pradesh and Assam-Meghalaya were the first two cadres in such alphabetical identification, the one general vacancy each, in these two cadres (as per the table) was substituted by OBC vacancies. The 4th respondent, who secured a lower rank than the petitioner, since he was an OBC candidate, was allocated to Andhra Pradesh cadre on the conversion of the AP General vacancy to an OBC vacancy. As a consequence the 'outsider' 'insider' 'outsider' (O-I-O) principle of allocation, spelt out and reiterated in the letter dated 30/31-5-1985 had to be deviated from.

The petitioner's claim to allocation to the AP Cadre and his challenge to such allocation of the 4th respondent, is predicated upon the assumption that he ranks

higher than the 4th respondent in the over all merit list; that the vacancy in the AP Cadre (1999 batch) is allocable to a "general insider vacancy"; that the principle of approximation followed by the 1st respondent on an alphabetical method results in an irrational application limited only to a few States and that as a consequence of following the said principle and thereby allocating the 4th respondent to the Andhra Pradesh cadre, the percentage of reservation for OBC's in the IPS cadre in Andhra Pradesh exceeds the 27% reservation available to the said category.

Rules 3 and 5 of the Cadre Rules are relevant and read as under:

" 3. Constitution of Cadres :- (1) There shall be constituted for each State or group of States an Indian Police Service Cadre.

(2) The cadres, so constituted for a State and a group of States are hereinafter referred to as a 'State Cadre' and a 'Joint Cadre' respectively.

... ...

5. Allocation of members to various cadres :- (1) The allocation of cadre officer to the various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned.

(2) The Central Government may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to another cadre. "

Identical Cadre Rules of the Indian Administrative Service fell for the consideration of and interpretation by the Supreme Court in ***Rajiv Yadav***'s case (2 supra). On facts, Rajiv Yadav appeared in the Civil Services Examination held in 1988. He hailed from the Union Territory of Delhi and opted for the 'Union Territory' cadres. On selection for appointment to the IAS, in the order of merit he was placed at Sl. No.16. He was allotted to the Manipur-Tripura Cadre. He represented for change of cadre, to "Union Territory" cadre. The representation was rejected by the Central Government. He therefore challenged the order of rejection before the CAT, New Delhi. The Tribunal allowed Rajiv Yadav's application holding that the policy contained in the Central Government's letter dated 31.5.1985 could not be considered "established policy guidelines in the matter" and that Cl.(2) of the said letter gave an added benefit to the IAS Probationers belonging to SC and ST which was not permissible under Art. 16(4) of the Constitution of India. Aggrieved thereby the Union of India approached the Supreme Court. The Supreme Court reversed the judgment of the CAT. It observed –

" 5. … When a person is appointed to an all-India Service, having various State Cadres, he has no right to claim allocation to a State of his choice or to his home State. The Central Government is under no legal obligation to have options or even preferences from the officer concerned. Rule 5 of the Cadre Rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/regulations or otherwise notify "the principles of allocation" adopted by the Government as a policy. The letter dated 31.5.1985 shows that the Central Government has always been having guidelines either in the shape of "limited zonal preferences system" or "Roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "Roster System" were not notified, it is no ground to hold that the same are non est and the Central Government cannot follow the same. In any case the "Roster System" has stood the test of time. It was operative during the years 1966 to 1977 and again it is being followed from 1985 batch onwards. The fact that the "Roster System" is being followed in practice by the Central Government for all these years, is in itself a sufficient publication of its principles.

6. We may examine the question fromd another angle. A selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an all-India Service bears liability to serve in any part of India. The principles of allocation as contained in clause(2) of the letter dated 31.5.1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/Scheduled Tribe candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The "Roster System" ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22 ½ % reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Caste/Scheduled Tribe candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of served candidates amongst all the cadres."

In view of the law declared in ***Rajiv Yadav's*** case (2 supra) it is thus clear that a candidate selected to an All India Service has no right to claim allocation to a State or Joint Cadre of his choice, including to his home State cadre; allotment of a cadre is an incident of service and a member of an All India Service is liable to serve in any part of India. The cadre allocation principles contained in the 1st respondent's letter dated 30/31.5.1985 have also been approved by the Supreme Court in *Rajiv*

Yadav's case as constituting an established Governmental policy. The Supreme Court has also ruled that the roster system spelt out in the said policy ensures equitable treatment to both general and reserved categories, in the matter of a fair distribution of the selected candidates amongst the States and ensure allocation of at least some of the candidates belonging to the reserved category to their home State.

Rule 5 of the IAS (Cadre) Rules 1954, which are identical to the Cadre Rules, fell for the consideration of the Supreme Court again in ***Union of India vs Mhathung Kithan & Others().*** The 1st respondent (therein) appeared in the Civil Services Examination in 1985 and was selected for appointment to IAS in the 1986 batch. His home State being Nagaland, he indicated his preference for allocation to the Nagaland State cadre. Both the available vacancies of Nagaland were earmarked for outsiders as per the 30 Point Roster. The 1st respondent was therefore allocated to the State of Haryana. He successfully challenged this allocation before the Chandigarh Bench of the Central Administrative Tribunal. The Tribunal directed the Union of India (appellant before the Supreme Court) to consider the transfer or the 1st respondent from Haryana cadre to Nagaland cadre. The defence reiterated by the 1st respondent before the Supreme Court was that in the previous, 1984 CSE when the Nagaland vacancy was allocable for an insider no insider was available and the vacancy was filled up by an outsider and therefore he ought to have been considered in the current year for allocation to the Nagaland cadre. Rejecting this contention the Supreme Court held that there was no rule providing for a carry over of an insider vacancy if such could not be filled in any recruitment year due to non-availability of an insider candidate. Allowing the appeal the Supreme Court upheld the roster principle followed by the Union while referring to and reiterating its ratio in ***Rajiv Yadav***'s case (2 supra).

During the 1999 batch (1998 CSE), only 36 vacancies were available to be filled up by regular recruitment from several State and Joint cadres and in as many as 13 States including Andhra Pradesh only one vacancy each was available. In this recruitment year therefore, while working out the fractions, no reserved candidate (including from OBCs) was initially earmarked for allocation to any of the 13 States. As a consequence, in the initial allocation of vacancies amongst the general, OBC and SC/ST categories, there occurred a shortfall of 2 OBC vacancies (as per the

applicable reservation percentage) and excess allocation of two vacancies to the general pool category. The need for readjustment, to comply with the percentage of reservation thus became inevitable.

On the successive working out of the outsider-insider-outsider principle, for allocation of cadres (as spelt out in the 1st respondent's letter dated 30/31.5.1985), the sole vacancy in the AP Cadre was earmarked for an "insider – General" candidate. However, in view of the need for reworking the allocation of adjustment of category-wise vacancies, two general vacancies had to be substituted by OBC vacancies. To achieve this object the 1st respondent in consultation with the DOPT, followed the principle of approximation by identification of the State cadres on an alphabetical method. In that process, Andhra Pradesh and Assam-Meghalaya, two of the States which also had one vacancy each during the recruitment year 1999, were identified for the purpose of substitution of the general vacancies of these States with OBC vacancies. Consequent on this exercise, the 4th respondent came to be allocated to the AP Cadre.

If the outsider-insider-outsider principle were the only principle or policy that had to be implemented by the 1st respondent, the petitioner, would be correct in his grievance and would have a legitimate claim to allocation to the AP cadre and the deviation by the Union of India on this account would have amounted to arbitrary conduct. However, the Union was required to operationalise a plurality of Governmental choices – (a) the various reservations; (b) equitable allocation of selected candidates belonging to the several categories to various State and Joint cadres to accommodate the personal preferences of such selected candidates to States or joint cadres of their choice and (c) distribution of the selected candidates in the matter of allocation, amongst the various State and joint cadres in the Union to achieve another compelling federal policy, of national integration and effective and neutral administration of the critical, All India Service. In the very nature of things it is not always possible to fulfil all the policy objectives in every factual circumstance and in every recruitment year. The 1998 recruitment year happened to be one such year. The number of vacancies were limited to 36 as compared to a much larger number in the earlier years, in particular the recruitment years 1995 to 1998.

The contention of the petitioner that the percentage of reservations should be strictly implemented in respect of every State or Joint cadre, is a contention that has no statutory basis nor is such a contention practical. Even empirically, in following the principles of reservation, mathematical exactitude is not always possible and therefore not legally required. Minor or occasional departures from the principle, consequent on the working out of the percentages of reservation is always permissible, subject however to the ceiling principles successively laid down by the Supreme Court including in the ***Indira Sawhney's*** case (1 supra). Coming to the All India Services, it must be recognised that the percentage of reservations is to be implemented at the recruitment stage. If the percentage of reservations is thus faithfully applied at the recruitment stage to an All India Service, the constitutional and administrative policy is rationally satisfied. As rightly contended by the Union, it has been following an administrative policy of ensuring, to the extent possible, equitable allocation of the various categories (general and reserved) while making allocations to the several State and Joint cadres. This is to ensure an equitable distribution of the All India Service posts in the several State and Joint Cadres amongst All India Service officers belonging to several reserved and un-reserved categories with a view to achieve a balanced composition of the State and Joint cadres. However, it may happen, as had happened in the 1999 Batch, that in the process of allocation, while implementing the approximation principle, consequent on the exigencies of a particular recruitment year, that a slight deviation from the equitable distribution of various categories (general and reserved) in some of the State or Joint cadres might occur. Such marginal deviations are not fatal either to the integrity of the All India Services recruitment policy nor do such variations, when they legitimately occur, subvert any of the statutory rules.

In the case on hand, OBC reservation came to be implemented in the All India Services from the 1994 CSE i.e., 1995 Batch. By the 1999 batch (inclusive) only 5 recruitments had occurred. The earlier 4 recruitments with the OBC reservation were in respect of larger number of vacancies in each of such earlier recruitment years. It is only in the 1999 batch that the vacancy position was drastically low i.e., 36 in all the 21 State and Joint cadres put together. In the circumstances and the exigencies of the factual situation, the Union followed the same practice as in the earlier years viz., of working out the approximations by identifying the State cadres by following the alphabetical method, for substitution of the general vacancy with an OBC

vacancy. If in the process, Andhra Pradesh and Assam-Meghalaya came to be identified as the two States where such substitution was made, it is the consequence of an idiosyncratic fact situation.

It is axiomatic that no human instrument, be it legislation, subordinate legislation or administrative policy, can perfectly cater to the variegated and dynamic complexities of a modern complex society. The complexities of accommodating the multitude of federal policy choices, already referred to herein above, is a daunting task. No solution can perfectly be tailored to fit such complex problems. The principle followed by the 1st respondent in adopting the alphabetical method is in the circumstances neither logically flawed, intrinsically arbitrary nor legally unsustainable.

The petitioner strenuously contended that despite data for 5 years (1994 CSE to 1998 CSE) being available, the 1st respondent had failed to note the resultant number of OBC candidates in each State/Joint cadre with a view to identify the appropriate principle to be followed in the mater of approximation. The initial distribution of the 36 vacancies in the various State and Joint cadres category-wise was done in May 1999. At this stage there was no allocation of any candidate to any cadre. It was only a drawing-board exercise undertaken in advance for considering eventual allocation to various cadres. Pursuant to this exercise it was noticed that 2 OBC candidates had to be accommodated against the 2 general vacancies. At the time of such initial exercise the relevant figures with regard to allocation of OBC category candidates to various IPS cadres was available only for the previous 4 years i.e., from CSE 1994 to CSE 1997. As the relevant material would be available only after issue of cadre allocation notification, the OBC component for the various cadre in respect of CSE 1998 was not available during the initial exercise in May 1999. When the final allocation exercise, duly accommodating the prescribed percentage of OBC reservation was taken up, it was seen by the 1st respondent that in as many as 13 State cadres, the fraction ignored for the purpose of allocation of OBC vacancies, in CSE 1998 was 0.27% each. This had resulted in the initial allocation of only 8 vacancies to the OBC candidates as against the 10 vacancies which ought to have gone to this category.

As two vacancies of general candidates had therefore to be diverted to OBC vacancies, the 1st respondent decided to decrease the general vacancies in the first

two State cadres (following the alphabetical method), out of the 13 State cadres where the neglected fraction was the same. This was done by the 1st respondent on the basis of the advice and the practice earlier followed by the DOPT. As the cadre allocation pursuant to this exercise in respect of CSE 1998 was made in October 1999, the data pertaining to OBC candidates of CSE 1998 could not possibly have been available with the 1st respondent in May 1999. The petitioner's apprehension that despite availability of data for all the 5 years the same was not considered by the 1st respondent, is therefore seen to be factually without basis.

Another factor that requires to be considered is that the distribution of candidates hailing from a particular State to other States of the Union is only implemented in case of regular recruitment and not in respect of persons appointed to the Indian Police Service by promotion. This is a policy choice. Neither the implementation of the reservation policy, the methodology and the principles followed for allocation of cadres nor the equitable distribution of regular recruitment candidates to various State or Joint cadres, while accommodating the preferences of some of the candidates belonging to the general and reserved categories and based on their over all or category-wise ranking, are areas *per se* governed by statutory rules. All these policy choices of the Union of India are on the basis of administrative instructions. In the context of such plural policy choices a spectrum of discretion has to necessarily inhere in the Central Government as to which of such policy choices must have precedence over the others, in a situation where all the choices cannot be wholly or satisfactorily implemented. It is in the exercise of such prerogative that the 1st respondent has presumably given preference to the policies of adhering to the percentage of reservation for OBC's and equitable allocation of cadres to persons belonging to reserved categories over the other policy of maintaining the outsider-insider-outsider ratio, in so far as the CSE 1998, is concerned. The mere fact that as a result of such prioritisation of its various policy choices by the 1st respondent, the expectations of the petitioner, of allocation to the AP State cadre on the basis of the outsider-insider-outsider principle, has not been fulfilled, cannot be a ground for invalidating the decision of the 1st respondent, particularly when the non-fulfilment of the petitioners expectation is not as a result of any conscious decision of the 1st respondent to deny the petitioner his expectations. In the considered view of this court, given the complexity of the situation and the various factors that had to be

accommodated by the 1st respondent in making cadre allocation in respect of the 1998 CSE, the principles followed by the 1st respondent cannot be held to be either arbitrary or irrational.

Though the grievance of the petitioner is in respect of his allocation to the Manipur-Tripura Joint Cadre and of the 4th respondent to the AP Cadre and he seeks a direction to the 1st respondent to allot him to the AP Cadre, grant of relief to the petitioner does not involve the merely simplistic exercise of substituting the petitioner with the 4th respondent in the matter of cadre allocation. Even if the petitioner were entitled, in law, for allocation to the AP Cadre, in preference to the 4th respondent, the 4th respondent cannot automatically be allotted to the Manipur-Tripura Joint Cadre. The 4th respondent has pleaded and this assertion has not been contested, that the vacancy in the Manipur-Tripura Joint Cadre for the relevant recruitment year i.e., 1998 CSE, is allocable to a "general outsider" candidate under the outsider-insider-outsider principle. If this be so, the 1st respondent would be required to undertake a wider reallocation exercise to identify where the 4th respondent could be allocated as an OBC candidate and which candidate could be allocated to the Manipur-Tripura vacancy. In the circumstances any one or more of the other 34 IPS.RR officers of the 1999 Batch apart from the petitioner and the 4th respondent, might be affected. The petitioner was therefore required to have impleaded all the candidates in the 1999 batch of IPS.RR Officers as party respondents both to the OA as well as to this writ petition. He has not done so. On this count also no relief could be granted to the petitioner.

The allocation of the petitioner to the Manipur-Tripura cadre was intimated by the 1st respondent in the offer of appointment letter dated 21.10.1999. By the notification dated 20.10.1999 the various officers of the 1999 batch were allocated to various State cadres. The petitioner filed the OA in the year 2001. As on date, nearly 5 years have passed by and the various officers would have undergone attachment training in the various State or Joint cadres to which they were allotted in 1999. Such attachment training is an integral part of the training process of the IPS probationers. Wholesale or extensive review of the cadre allocation in the circumstances would not be conducive to public interest.

In the facts and circumstances and on the analysis above, this court is of the considered view that the decision of the Central Administrative Tribunal, Hyderabad Bench, rejecting OA No.155 of 2001, suffers from no infirmity and the petitioner is not entitled to any relief. The writ petition is accordingly dismissed. No costs however.

Date: . .2005 ----------

Pvsn Justice J.Chelameswar

Justice G.Raghuram

One fair copy to the Hon'ble Mr.Justice J.Chelameswar (for his Lordship's kind perusal).

One fair copy to the Hon'ble Mr.Justice Goda Raghuram (for his Lordship's kind perusal).

To

1. The Secretary to Government, Union of India,

Ministry of Home Affairs, New Delhi.

2. The Secretary to Government of AP, General Administration

Department, Secretariat, Saifabad, Hyderabad. 3. The Chief Secretary to Government of Tripura, Agartala.

4. Two Copies to the Additional Central Government Standing Counsel, High Court Buildings, Hyderabad. (OUT)

5. Two Copies to the Government Pleader for Services-I,

High Court Buildings, Hyderabad (OUT).

6. 8 LR Copies

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